ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION I

CACR06-647

March 14, 2007

MATTHEW BARNETT APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. CR-05-651]
V.	HONORABLE J. MICHAEL FITZHUGH, CIRCUIT JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

After appellant, Matthew Barnett, pleaded guilty to the crime of theft of property, the circuit court suspended imposition of his sentence for five years, conditioned upon good behavior and payment of $640 in restitution at the rate of $50 each month. The State subsequently filed a petition to revoke, asserting that appellant failed to pay restitution as ordered and committed two counts of aggravated assault, one count of disorderly conduct, and one count of public intoxication, all in violation of the terms and conditions of his suspended imposition of sentence. Following a hearing, the court revoked, and on appeal, appellant argues that the court erred because there was insufficient evidence that he willfully violated the terms and conditions of his suspended imposition of sentence. We disagree, and

accordingly, we affirm.

At the hearing, the State presented several witnesses. To support the public intoxication allegation, a dispatcher for a cab company testified that appellant entered the dispatch office and asked for a cab. He testified that appellant smelled of alcohol and was argumentative, belligerent, and staggering drunk. Appellant stated that he did not have any money, and when the dispatcher told appellant that he thus could not hire a cab, appellant stated, "If I had a gun you would get me a cab." The dispatcher testified that this made him nervous, and he called the police because he thought appellant was prone to violence.

Two officers and the manager of a boarding house testified regarding an incident in which appellant was arrested for disorderly conduct. The manager stated that when appellant was residing at the boarding house, he had an argument with another tenant. The manager asked appellant to be quiet, and appellant threw a bowl of guacamole at the manager. While the officers were there, appellant threw a bowl of butter at a tenant and attempted to attack the tenant. According to one officer, appellant smelled of intoxicants, his speech was slurred, and he had trouble walking.

The manager also testified regarding one of the assault allegations. Appellant tried to kick in the door of a tenant's room, and the manager asked appellant to be quiet. She later saw appellant with a knife. Appellant ran the blunt side of the blade across his arm and stated to the manager, "Come on, I will show you what this can do to you." The manager called the police. The officer who took possession of the knife from appellant testified that

appellant smelled of intoxicants and was probably intoxicated.

As for the other assault allegation, another witness testified regarding an altercation between appellant and him, of which the witness had only a vague recollection. The witness asserted that he fought with appellant, that appellant had a knife, and that he believed appellant cut him on his hand.

Finally, the State introduced into evidence a restitution ledger. The State did not present any testimony explaining the ledger, but the ledger showed that appellant had paid $250 of the total $640 ordered in restitution, leaving a balance of $390, with $50 being the amount past due.

Appellant argues that the evidence was insufficient to establish that he willfully violated the terms and conditions of his suspended sentence, and in particular, he asserts that a failure to pay restitution must be willful. A circuit court must find by a preponderance of the evidence that a defendant inexcusably violated a condition of his suspended sentence, and we do not reverse unless the court's findings are clearly against the preponderance of the evidence. *See, e.g.*, *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003). The State need only prove one violation for the court to revoke. *Id*.

We hold that, without even considering the restitution condition, the evidence was sufficient to support the revocation. The State presented evidence of four instances in which appellant engaged in conduct that violated the good-behavior condition of his suspended sentence. We observe that a person commits the offense of public intoxication if he appears

in a public place manifestly under the influence of alcohol to the degree and under circumstances such that the person unreasonably annoys a person in his vicinity. Ark. Code Ann. § 5-71-212(a) (Repl. 2005). The dispatcher's testimony was sufficient to establish that appellant committed the offense of public intoxication. Further, a person commits the offense of disorderly conduct if, with the purpose to cause public inconvenience, annoyance, or alarm or recklessly creating a risk of public inconvenience, annoyance, or alarm, he engages in fighting or in violent, threatening, or tumultuous behavior. Ark. Code Ann. § 5-71-207(a)(1) (Repl. 2005). The testimony regarding the butter-and-guacamole throwing incident at the boarding house was sufficient to establish that appellant committed the offense of disorderly conduct. And, without considering whether appellant committed an aggravated assault, we note that a person commits the lesser-included offense of third-degree assault if he purposely creates apprehension of imminent physical injury in another person. Ark. Code Ann. § 5-13-207(a) (Repl. 2006). The testimony regarding the incident in which he threatened the manager with a knife and the testimony regarding the incident in which he used a knife during a fight was sufficient to establish that he at least committed two counts of third-degree assault. Thus, there was a preponderance of evidence that appellant violated the terms and conditions of his suspended imposition of sentence.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.